

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Cr. No. 18-3495 JCH
	)	
<b>DOUGLAS D. SMITH,</b>	)	
	)	
Defendant.	)	

UNITED STATES' MOTION FOR A *LAFLER-FRYE* HEARING

The United States respectfully moves this Court to inquire prior to trial in this matter, whether defense counsel communicated to Defendant the plea offer extended by the United States, and in support states:

1. Under *Missouri v. Frye*, 566 U.S. 134 (2012) and *Lafler v. Cooper*, 566 U.S. 156 (2012), a defendant has the right to effective assistance of counsel during pre-trial plea negotiations, including as to plea offers that lapse or are rejected. The United States extended a plea offer to Defendant via his counsel, Aric Elsenheimer. Defendant has rejected the United States' plea agreement.

2. So that a clear record will exist in the event Defendant is convicted at trial and subsequently brings a claim under 28 U.S.C. § 2255 alleging that his attorney failed to effectively convey the United States' plea offer to him, the United States respectfully requests the Court undertake an inquiry on the record prior to trial. For the Court's convenience, the United States provides the following as an example of the language the Court could use during such an inquiry:

I am informed that the government made you a plea offer that you rejected.

Do not tell me about the content of any discussion between you and your counsel. Do not tell me the terms of any plea offer made by the government. This Court is not involved in any plea negotiations, and states no opinion regarding your decision to plead guilty or proceed to trial. I simply request a yes or no answer to the following questions:

First, did you discuss with your attorney the plea offer made by the government?

Second, are you satisfied that, prior to rejecting the plea offer, you had a full and complete opportunity to discuss the plea offer with your attorney?

Respectfully submitted,

JOHN C. ANDERSON  
United States Attorney

Electronically filed on 05/06/20  
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I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will cause a copy of this filing to be sent to counsel for Defendant.

/s/\_\_\_\_\_  
NOVALINE D. WILSON  
Assistant United States Attorney